

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
JACQUELYN D. CHAMPION-LEE) CASE NO. 05-65635-MHM
)
Debtor)

ORDER GRANTING MOTION TO CONVERT

This matter is before the court following hearing on Debtor's motion to convert from a Chapter 7 case to a Chapter 13 case. The Chapter 7 Trustee filed an objection to the conversion, asserting that Debtor's motion to convert and her Chapter 13 plan were not proposed in good faith.

This case commenced as a Chapter 7 case. At the time the initial Chapter 7 petition was filed, both Debtor and her husband were unemployed. In Debtor's schedules, she failed to disclose that she owned any interest in real estate. She listed \$52,336.33 in unsecured nonpriority debt. At the §341(a) meeting of creditors, in response to the Chapter 7 Trustee's questioning, Debtor testified her husband owned their residence, but, upon additional questioning, Debtor admitted that her husband had conveyed one-half interest in the residence to her in 1998.¹ Shortly after the §341 meeting, the Chapter 7 Trustee made a demand upon Debtor for the net equity in the residence. That demand prompted Debtor to file a motion to convert her Chapter 7 case to a Chapter 13 case.

¹ Debtor's husband executed a quitclaim deed June 26, 1998, with himself as grantor and with himself and Debtor as joint tenants with right of survivorship.

With her motion to convert, Debtor filed amended schedules disclosing her interest in the residence. Debtor valued the residence at \$131,000, with an outstanding mortgage of approximately \$82,000. Her one-half interest in the residence would yield, after deduction of a \$10,000 exemption amount,² \$14,700 for distribution to creditors. Debtor's amended schedules also show that her husband is now employed and, in a further amendment filed approximately a month later, Debtor also is now employed. An amended Schedule J shows a substantial increase in monthly expenses, from a total of \$1800 in the Chapter 7 Schedule J to \$3010 in the most recent amendment to Schedule J. Debtor's amended Schedule F decreased the total unsecured debt to \$41,775.49.³ The Chapter 13 plan filed with Debtor's motion to convert proposes a composition plan with a monthly plan payment of \$365 and a 35% dividend to unsecured creditors.

The Chapter 7 Trustee asserts that Debtor's initial failure to disclose her interest in the residence was an intentional concealment evidencing bad faith and rendering any Chapter 13 plan unconfirmable because Debtor would be unable to satisfy the good faith requirement of §1325(a)(3). *See In re Sully*, 223 B.R. 582 (Bankr. M.D. Fla. 1998). Debtor's testimony, however, was not so incredible as to convince the court that Debtor

² Given Debtor's initial failure to disclose her interest in the residence, her entitlement to the exemption is uncertain. *See Henkel v. Green*, 268 B.R. 628 (Bankr. M.D. Fla. 2001); *In re Talmo*, 185 B.R. 637 (Bankr. S.D. Fla., 1995); *In re Snow*, 21 B.R. 598 (Bankr. E.D. Cal., 1982); *In re Lundy*, 216 B.R. 609 (Bankr. E.D. Mich. 1998).

³ This does not, of course, include any claim which may be filed by the Chapter 7 Trustee.

will be unable to propose a confirmable plan. A Chapter 13 plan provides another means to pay creditors their due and give the Debtor an opportunity to retain the residence.

The Chapter 7 Trustee has performed his duties in this case with admirable diligence and should file a claim in the Chapter 13. Upon conversion of this case to a Chapter 13 case, Debtor's financial condition will be subject to the further scrutiny of her creditors and the Chapter 13 Trustee. The provisions applicable to a Chapter 13 case will provide protection to creditors and, if Debtor is unable to propose a confirmable plan or is unable to comply with the terms of a confirmed plan, this case will be reconverted to a Chapter 7 case. Under these circumstances, conversion to a Chapter 13 case appears to be in the best interests of Debtor's creditors. Accordingly, it is hereby

ORDERED that Debtor's motion to convert is *granted*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the Chapter 7 Trustee, the Chapter 13 Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the ____ day of April, 2006.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE